J. M. M. LEWIS & ORS. v. W. E. BALASINGAM

[O.C.J. (Ong Hock Sim J.) September 3, 1969]

[Ipoh — Civil Suit No. 188 of 1968]

Contracts — Dissolution of partnership — Partnership based on written agreement — Whether court has power to dissolve partnership — Contracts (Malay States) Ordinance, 1950, s. 207.

Partnership — Dissolution of — Partnership cannot be determined by notice of dissolution — Partnership can be dissolved by court on specific grounds — Gross misconduct — Meaning of.

Advocates and Solicitors — Partnership — Dissolution of — "Grossly improper conduct" in the discharge of his professional duty — Allegation of — Advocates and Solicitors Ordinance, 1947, s. 26 (2) (b) — Contracts (Malay States) Ordinance, 1950.

The issue raised upon a preliminary question in this case was whether the plaintiffs are entitled to: (a) a declaration that the partnership between the plaintiffs and the defendants constituted by a memorandum of agreement dated December 14, 1966 may be dissolved by the plaintiffs giving to the defendant prior notice in writing of their intention to dissolve it; or (b) alternatively, a declaration that the partnership may be dissolved by the court. It was alleged that the conduct of the defendant amounted to gross misconduct because of his non-attendance or infrequent attendance at the office.

Held: (1) a notice of dissolution would be ineffective to dissolve the partnership having regard to the fact that there is in existence an agreement which has otherwise provided for a means of terminating the partnership;

(2) the conduct complained of in this case did not amount to "gross misconduct" and therefore the court could not order a dissolution under section 207 of the Contracts (Malay States) Ordinance, 1950.

Case referred to:-

(1) *Ting Tien Kwang & Ors.* v. *Kong Sung Seng & Ors.* [1964] M.L.J. 427, 428.

CIVIL SUIT.

S. D. K. Peddie for the plaintiffs.

R. R. Chelliah for the defendant.

Ong Hock Sim J. (delivering oral judgment): As agreed by both counsel the issue in this case was to be heard first upon the preliminary question whether assuming the plaintiffs have proved the matters raised in their pleadings they are entitled in law to either of the prayers in their statement of claim (a) for a declaration that the partnership between the plaintiffs and the defendant constituted by a memorandum of agreement dated the 14th day of December 1966 may be dissolved by the plaintiffs giving to the defendant prior notice in writing of their intention to dissolve it; or (b) alternatively, a declaration that the partnership between the plaintiffs and the defendant constituted by a memorandum of agreement dated the 14th day of December 1966 may be dissolved by this court and an order that it be so dissolved on the last day of the month next following the date of this order.

I believe that at the outset it was conceded that the first prayer i.e. that it may be dissolved by a notice would be contrary to the Contracts (Malay States) Ordinance, 1950 and that such notice would be ineffective to dissolve the partnership having regard to the fact that there is in existence an agreement which has otherwise provided a means of terminating the partnership (section 205 of the Contracts (Malay States) Ordinance, 1950). I also believe that there is no dispute that section 32 paragraph (c) of the United Kingdom Partnership Act 1890 has no corresponding section in our Contracts (Malay States) Ordinance, 1950 and I can find no section in our own Contracts (Malay States) Ordinance, 1950 which provides for a dissolution by one partner giving notice to the other.

I therefore come to the question whether the court has power to decree a dissolution of the partnership. Section 207 of the Contracts (Malay States) Ordinance, 1950 has been referred to and it is urged on one side, that is, on behalf of the plaintiffs that the court has inherent power to dissolve the partnership where it has been shown in terms of paragraph 3 of the statement of claim that the basis of the partnership had reached a stage where it was not possible or profitable for the partnership to continue to subsist. On the other side, that is, on behalf of the defendant, it is urged that the powers under section 207 for the court to dissolve the partnership can only be exercised within the framework and the circumstances which are set out in section 207.

Mr. Peddie, counsel for the plaintiffs, has raised the issue that where the partnership can only be carried on at a loss, referring to paragraph (f) of section 207, the court can proceed to make an order for the partnership to be dissolved. It is not, however, one of the grounds alleged in the statement of claim and therefore I have to decide whether paragraph 3 of the statement of claim can be said to fall within paragraph (d) or (e) of section 207 of the Contracts (Malay States) Ordinance, 1950 in respect of the defendant's non-attendance or infrequent attendance at the office. I am not minded to extend the definition of "gross misconduct" to cover cases of disagreement between partners and enable a dissolution to be made, where the contract or the agreement has provided other means of resolving such differences. As was quoted by Mr. Peddie (page 711 of the Indian Contracts Act by *Pollock & Mulla*, 6th Edition), the words "gross misconduct" are perhaps not the most apt to cover all the circumstances in which such a state of feeling may arise and exist between the partners as to render it impossible that the partnership can continue with advantage to either. It seems that in such a case either partner may claim a dissolution. The Indian courts are not likely to decline jurisdiction; they might be astute to bring the facts within sub-section (6)* when the basis of the partnership can only be carried on at a loss. That allegation is not in the statement of claim and therefore I do not propose to follow the Indian example. I may perhaps get a little assistance in trying to decide how I should interpret gross misconduct. We have our section 26(2)(b) of the Advocates and Solicitors Ordinance, 1947, which says:

> "Such due cause may be shown by proof that such advocate and solicitor has been guilty of fraudulent or grossly improper conduct in the discharge of his professional duty...."

I think the words "grossly improper conduct" are put in so that the court may not regard any ordinary

* of section 254 of the Indian Contract Act, 1872 as it stood before 1932. Now see the Indian Partnership Act, 1932, s. 44.

misconduct or other conduct not up to partnership standard as amounting to gross misconduct. In the circumstances, looking again at all the particulars alleged in furtherance of paragraph 3 of the statement of claim, I am not minded to regard them as amounting to gross misconduct. There is also a contradiction in the statement of claim which alleges that during the year 1967 there was reason to complain of the conduct of the defendant with regard to the affairs of the partnership whereas in the further and better particulars of the statement of claim it was alleged that this occurred during the year 1966 and onwards. We have the admitted fact that during the greater part of the year 1967, at least from March until October 1967, the defendant was on leave and therefore for the greater part of the year there would be very little evidence in support of the complaint of misconduct. The allegation again that the defendant by becoming a director of a mining company in paragraph 5 was in breach of the term of the partnership agreement, namely his failure to devote full-time services to the partnership, I cannot accept. I do not know whether the plaintiffs are estopped but it must be well known to them that the defendant had accepted and it is generally not unusual in any partnership for a partner to accept directorships in companies. In fact, I believe some firms even encourage it as a means of furthering the interests of the partnership, by channelling the company business to the firm. I therefore disregard this as a serious breach of the partnership agreement or as gross misconduct for the purpose of section 207. I have been referred to many sub-sections of section 206 of the Contracts (Malay States) Ordinance, 1950. That section begins with the words "In the absence of any contract to the contrary." I have therefore to look at the agreement of partnership and in particular, the dissolution clauses, namely, 23, 24 and 25. Clause 14 provides another method other than those just referred to for the determination of the partnership, which reads:

"If any partner shall from illness or accident or other cause be incapacitated from attending to the partnership business for 3 months consecutively and the other partners shall at or after the expiration of 3 months give to the incapacitated partner not less than 1 month's notice in writing of their intention to determine the partnership as to the incapacitated partner then at the expiration of such notice the partnership shall as to such incapacitated partner determine accordingly and he shall be deemed to have retired from the partnership within the meaning of any reference to retirement contained in clause 23 hereof unless before the expiration of such notice he shall have resumed his partnership duties to the reasonable satisfaction of the other partners or partner."

This can safely be disregarded because that is not the ground upon which this prayer for dissolution is made. I accept the arguments of counsel for the defendant that there are only two ways in which this partnership could be dissolved — by mutual consent or by 6 months' notice in writing. It is urged by counsel for the plaintiffs that there will be considerable hardship for the three plaintiffs will have to work for the benefit of the defendant for a period of 6 months to carry him so to speak and then hand over the benefits to the defendant. Unfortunately, this is an agreement to which the parties were in no sense unappreciative of the obligations they undertook and the responsibilities they were going to shoulder. I feel some sympathy for that argument but the court is not entitled to go behind the agreement.

Upon the preliminary issue I therefore find for the defendant and I hold that the court has no jurisdiction in the circumstances to decree an order for dissolution. There must, to my mind, be some reason for the omission in section 207 of the further paragraph which exists in the United Kingdom Partnership Act which reads:

"Whenever in any case circumstances have arisen which, in the opinion of the court, render it just and equitable that the partnership be dissolved."

That omission from our Contracts (Malay States) Ordinance, 1950 cannot be wholly disregarded and I would be extending the jurisdiction of the court beyond what the legislature has chosen to confer. True Mr. Peddie has drawn my attention that the English cases cited were decided prior to the enactment of the Partnership Act of 1890. In the absence of any statute to the contrary, the courts there felt that they could be liberal and it may be that the enactment of paragraph (f) of section 35 of the United Kingdom Act was to accept and acknowledge the practice. I am reminded however of the words of the Chief Justice of Singapore in the case of *Ting Tien Kwang & Ors.* v. *Kong Sung Seng & Ors.*[1] where he says:

"Section 14 (equivalent to section 207 of our Contracts (Malay States) Ordinance) merely gives the court power to dissolve a partnership at the suit of a partner on certain specific grounds and this section does not specify notice of dissolution as a ground. ... The legislature has not provided for the dissolution of a partnership at will by the unilateral act of a partner but has specifically provided for a partner retiring from a partnership at will."

On that basis I have ruled prayer (a) must fail and I also hold that the court has no general power to dissolve a partnership based on a written agreement except upon the grounds specified in section 207.

I hold that the particulars which are set out in amplification of paragraph 3 do not amount to gross misconduct which, unfortunately, is not defined and is left to the court to construe. To amount to gross misconduct, there must be more than what has been specified in the particulars.

There will be judgment for the defendant with costs.

Judgment for the defendant.

Solicitors: *Skrine & Co.; R. R. Chelliah Bros.*

LAI FOOK KEE v. PUBLIC PROSECUTOR

[A.C.J. (Abdul Aziz J.) October 3, 1969]

[Kuala Lumpur — Criminal Appeal No. 38 of 1969]

Bribery and Corruption — Corrupt transaction with agent — Knowingly giving document containing statement which was false in a material particular and which was intended to mislead principal — Proof of personal knowledge by the accused that statement was false — Prevention of Corruption Act 1961, s. 4 (c).

This was an appeal against the conviction of the appellant on three charges under section 4 (c) of the Prevention of Corruption Act. The charges arose out of the piling work on the low-cost housing scheme undertaken by the Kuala Lumpur